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SENSITIVE

SIPDIS

USTR FOR DAWN SHACKLEFORD

JUSTICE FOR JOE JONES, ANDREW NORMAN

E.O. 12958: N/A

TAGS: [ETRD](#) [PGOV](#) [KCOR](#) [EAID](#) [WTO](#) [ECON](#) [EINV](#) [IZ](#)

SUBJECT: CUSTOMS HURDLES TO IRAQ TRADE LIBERALIZATION

REF: BAGHDAD 2374

**¶11.** (SBU) SUMMARY AND COMMENT: Iraq's customs and trade dispute resolution procedures lack the structure and transparency to ensure orderly, consistent resolution of complaints by importers. According to the President of Iraq's Customs Court, the court does not have jurisdiction over civil cases - erroneous imposition of tariffs or the arbitrary refusal to admit imports - that arise from cross-border trade disputes. Instead, Iraq's judiciary handles the disputes ad hoc, referring complaints to civil courts based primarily on geographic jurisdiction, not expertise in customs and commercial law. Iraq's General Customs Commission may also prohibit imports without oversight by the Executive or Parliament. A draft Customs Tariff Law currently pending second reading in the Council of Representatives does not address these business hurdles, and fails to capitalize on the best opportunity the GOI has to codify Iraq's prohibited items list, despite recommendations by USAID contractors who have repeatedly advised the bill's drafters at the Ministry of Finance to move toward international practices with WTO accession-friendly fixes. We continue to believe that WTO accession negotiations - something the GOI is delaying (reftel) - would be the best forum to push for the many steps Iraq needs to improve its business and investment environment. Though we do not expect discussion at the upcoming Dialogue on Economic Cooperation in Washington to reach this level of detail, we believe a frank exchange about the steps Iraq needs to take toward WTO accession may help speed the process. END SUMMARY AND COMMENT.

#### BACKGROUND

**¶12.** (SBU) Located at the Rusafa Judicial Palace in Baghdad, the Iraqi Customs Court operates under the authority of the Higher Judicial Council as a criminal court that specializes in customs violations. Most challenges investors and traders face at the border, such as tariffs disputes, are outside of the Court's jurisdiction and there is no officially designated court for the potential problems they may encounter - including the erroneous imposition of tariffs, the assessment of excessive tariffs, or the arbitrary refusal to admit imports. According to Customs Court President Najim Abudullah Muhsin, the Customs Court deals exclusively with violations of the Customs Law, has the power to detain individuals, and its procedures are governed by the Iraq Law on Criminal Procedure. Iraq's General Customs Commission initially investigates criminal cases that it then transfers to the investigative judge at Rusafa.

NO TARIFF DISPUTE RESOLUTION IN IRAQ CUSTOMS COURT

**¶13.** (SBU) Iraq's Customs Court does not assist traders or investors when they encounter tariff problems at the border,

as its function is purely criminal. Customs Court Judge Saad Mohammed Abdul Karim has told us that importers must appeal to the Director General of the Ports of Entry (POE) to dispute tariffs on shipments of goods or to seek release of goods held at the border. (COMMENT: POE DGs are widely suspected of corrupt practices, and it is unlikely that the rare criminal investigation would broadly resolve systemic import delays. END COMMENT). In most cases, according to Karim, it would be less costly for the importer to pay the disputed tariff. Although Muhsin has told us that civil action could be brought in any court, civil order enforcement in Iraq is uncertain in many instances. If a customs official in Iraq is uncertain in many instances. If a customs official is holding goods for a bribe, the investor would be able to file a complaint with the Customs Court to initiate a criminal investigation. Damages might also be available in a criminal case against the customs official. However, if the customs official holds goods or assesses a tariff without criminal intent but under conditions the importer disputes, immediate relief under the current, ad hoc civil system is unlikely.

#### CUSTOMS COURT PROSECUTES CORRUPTION CASES

¶4. (U) Corruption complaints may be filed with the Commission on Integrity (CoI), the Ministry of Finance (MoF), the Customs Court, or with any court in the area where the violation occurs. Muhsin has told us that the court sees numerous cases of collusion between customs officials and importers. A customs violation is usually discovered by identifying inconsistencies in the accompanying documentation when the goods reach a second inspection checkpoint. Muhsin said for example, a customs official at the border would

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prepare documentation and charge an importer for 100 kilos of goods, but allow 300 kilos of goods into the country. The customs official at the second checkpoint will discover the inconsistency and report the importer to the General Customs Commission for investigation.

¶5. (U) The Customs Court has prosecuted both those who give and receive bribes, according to Muhsin. Also, the court exercises its prerogative to detain individuals prior to their hearing. The Court does not publish its decisions, so consistency in interpretation of the Customs Law is not assured, and guidance for potential importers is limited.

#### NO OVERSIGHT IN ADMINISTRATION OF PROHIBITED ITEMS LIST

¶6. (SBU) According to Muhsin, the General Customs Commission is responsible for promulgation of the GOI's prohibited items list, the list of imports the GOI restricts based on concerns ranging from protecting domestic producers to national security controlled items. Muhsin could not identify any executive or legislative oversight of the GOI's list. USAID contractors working closely with the Ministry of Finance during the process of drafting the GOI's Customs Tariff Law had advised drafters to codify procedures for administering the prohibited items list, including the process for adding goods. The draft law underwent its first reading in the CoR on June 9, 2009, without these provisions. The second reading, originally scheduled for October 1, has been postponed while the Ministry of Finance works to incorporate an unrelated schedule of the commercial items and their relevant tariffs into the draft bill.

HILL